

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID S. TAUB and MARC TAUB

Cons. Case No.: 09 CV 599
09 CV 601 (ADS)(ETB)

Plaintiffs,

- against -

MARCHESI DI BAROLO S.P.A.,

Defendant.

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PALM BAY INTERNATIONAL, INC.

Plaintiff,

- against -

MARCHESI DI BAROLO S.P.A.,

Defendant.

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PLAINTIFFS' REPLY TO THE MOTION FOR A STAY OF JUDGMENT

Plaintiffs Palm Bay International, Inc.; David Taub; and Marc Taub, by and through their counsel, Ettelman & Hochheiser, hereby move the Court pursuant to Fed. R. Civ. P. 62(b) for a stay of judgment and permission to file a supersedeas bond pending the Court's ruling on Plaintiffs' post-judgment motion, stating as follows:

1. The instant motion seeks the entry of a stay pursuant to Fed. R. Civ. P. 62(b) pending the Courts' decision on the Motion for Judgment as a Matter of Law pursuant to Fed. R. Civ. 50(b), as well as permission to file a supersedeas bond. The reason Plaintiffs have requested permission to file a bond is to guarantee protection of Defendant Marchesi's interests

while the Court rules on the JNOV motion, which Plaintiffs believe is meritorious and likely to succeed based on the overwhelming and relevant case law cited in support therein.

2. In opposition to the motion to stay, Defendant Marchesi appears to either have misconstrued or misread Plaintiffs' requested relief. Repeatedly, Marchesi asserts that it opposes the entry of a stay without the posting of a bond. In fact, in its concluding paragraph, Marchesi states that "Marchesi requests asserts [sic] that that this Court deny Plaintiffs' Motion *to the extent* that it seeks a stay of judgment *without* the posting of a supersedeas bond..." (emphasis added)

3. However, as is clearly delineated in the motion, and the instant reply, Plaintiffs have requested the entry of a stay with the posting of a bond. (*See* Motion, ¶ 7) ("Palm Bay requests, if the Court deems it amenable, permission to file a Fed. R. Civ. P. 62(d) supersedeas bond in the amount of \$519,522.68, which would protect Marchesi's interest while the Court decides the JNOV motion.") Thus, because Marchesi's response brief only opposes a stay "to the extent" that it is without a bond, and in fact Plaintiffs do not seek such a stay, Plaintiffs requested relief appears unopposed.

4. Therefore, because the posting of a supersedeas bond will protect Marchesi's interest, and because Plaintiffs' motion is likely to succeed on the merits (or even if not, Plaintiffs intend to file an appeal), this Court should grant the instant application for a stay pursuant to Fed. R. Civ. P. 62(b), and permission for Plaintiffs to file a Fed. R. Civ. P. 62(d) bond pending ruling on the JNOV motion.

WHEREFORE, Plaintiffs respectfully request that the Court grant a stay of judgment pending the Court's ruling on Plaintiffs' Rule 50(b) and 59 motion.

Dated: Garden City, New York
November 2, 2010

ETTELMAN & HOCHHEISER, P.C.

By: _____/s/

Gary Ettelman (GE-9315)

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF system, which will send notification of such filing to all attorneys of record.

ETTELMAN & HOCHHEISER, P.C.

By: _____/s/
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